No. 93-1604

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

CITY OF CLEARWATER, FLORIDA, *et al.*,
Petitioners,
v.
CHURCH OF SCIENTOLOGY FLAG SERVICE ORG., INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

~~MOTION FOR LEAVE TO FILE~~ BRIEF AMICUS CURIAE AND BRIEF OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

IRIS J. JONES
City Attorney of Prairie View
c/o Wright & Greenhill
221 West 6th Street
Suite 1800
Austin, Texas 78701

WILLIAM J. KEARNS, JR.
Township Solicitor
630 Beverly Rancocus Road
Willingboro, New Jersey 08046

PATRICIA A. LYNCH
City Attorney
City Hall
P.O. Box 1900
Reno, Nevada 89505

ROBERT J. MANGLER
Village Attorney of Orland Park
c/o Klein, Thorpe & Jenkins
180 North LaSalle Street
Suite 1600
Chicago, Illinois 60601

JOHN J. ZIMMERMANN
Attorney for Municipalities
524 South Vine Avenue
Park Ridge, Illinois 60068

BENJAMIN L. BROWN *
General Counsel and
Executive Director
1000 Connecticut Ave., N.W.
Suite 902
Washington, D.C. 20036
(202) 466-5424

DAVID CAYLOR
City Attorney
#2 Civil Center Plaza
El Paso, Texas 79901

JOSEPH N. DE RAISMES
City Attorney
1777 Broadway
Boulder, Colorado 80306

JAMES H. EPPS, III
City Attorney
115 East Unaka Avenue
Johnson City, Tennessee 37601

FRANK B. GUMMEY, III
City Attorney
P.O. Box 2451
Daytona Beach, Florida 32115

* Counsel of Record
for the Amicus Curiae

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~~MOTION FOR LEAVE TO FILE~~ BRIEF AMICUS CURIAE

Pursuant to Rule 37.2 of the Rules of this Court, the amicus respectfully moves this Court for leave to file the attached Brief Amicus Curiae in support of the Petitioners. All Petitioners and Respondent have consented to the filing of this brief. The written consent of the parties has been hand delivered to the Clerk of this Court.

The amicus is an organization called the National Institute of Municipal Law Officers ("NIMLO") and is a non-profit, non-partisan organization, consisting of over fourteen hundred (1400) local governments and municipal attorneys. These member local governments operate NIMLO through their chief legal officers, variously called city or county attorneys, corporation counsel, city solicitors, law directors, and other titles.

It is not now, and never has been, NIMLO's policy to volunteer its services as an amicus to the various municipalities which may have a case before the Court. Rather, NIMLO's amicus participation occurs when a municipality requests NIMLO to evaluate a case for possible nationwide impact and to consider whether amicus support is warranted. Upon receiving such a request, the case in question is reviewed by NIMLO's Board of Directors and, after such review, this Brief is submitted on behalf of NIMLO. NIMLO, which is dedicated to gathering and disseminating information on the most recent legal developments affecting municipalities, has a vital interest in the outcome of this case because many NIMLO members regulate solicitations by charitable organizations. NIMLO believes that the ordinance challenged in this case is valid and proper and that its constitutionality should be affirmed.

This case is compelling because many hundreds, if not thousands, of municipalities, counties and states throughout the country have confronted the ever-increasing problems of fraudulent solicitations of funds by charitable organizations by adopting registration and disclosure laws. There are at least twenty (20) state registration and disclosure laws and hundreds, if not thousands, of municipal and county disclosure ordinances. These statutes and ordinances have been held to be constitutionally permissible means of addressing the problem of fraudulent solicitation by charitable groups. *See, e.g., Village of Schaumberg v. Citizens for a Better Environment, et al.*, 444 U.S. 620 (1980).

Thus, the impact of this case goes far beyond the City of Clearwater. If this Court upholds the Eleventh Circuit's decision, hundreds if not thousands of laws similar to Clearwater's will be jeopardized. The disclosure provisions of Clearwater's law that were held unconstitutional mirror those contained in the other numerous state, county, and city registration and disclosure laws. Yet, the

Eleventh Circuit's ruling comes at a time when the problem of charitable solicitation fraud is growing. Thus, NIMLO and its member local governments are concerned that local governments will be unable to adequately protect their citizens from fraudulent solicitation.

NIMLO and its members have another extremely important interest in this matter. The Eleventh Circuit ruled that Clearwater's law was enacted with an impermissible motive because the need for the law was made clear by the conduct of a group claiming to be a religion. This ruling, if left standing, obstructs NIMLO's members from enacting laws to protect citizens if misconduct by groups claiming to be religious organizations come to the government's attention. Frequently the need for a law is brought to the attention of government by the conduct of one group. If that group happens to be religious, the law will be struck down as having an impermissible motive under the Eleventh Circuit's decision. If the Court's position is not reviewed and reversed, NIMLO's members will be prevented from protecting their citizens from improper conduct that is brought to the government's attention by the actions of a religious group. Additionally, a decision in favor of the Church of Scientology could render unconstitutional other laws already adopted by local governments. All of this contradicts this Court's prior ruling that mere adverse impact on a religion does not prove impermissible anti-religious motive. *See, generally, Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, —— U.S. ——, 113 S.Ct. 2217 (1993).

Because the amicus' members regulate solicitation by charitable and religious organizations and have a compelling interest in statutes and ordinances regulating such fundraising, and because amicus wishes to ensure that the Court is made fully aware of the gravity of this case, NIMLO seeks leave to file this brief to assist the Court in the resolution of this case.

Respectfully submitted,

IRIS J. JONES
City Attorney of Prairie View
c/o Wright & Greenhill
221 West 6th Street
Suite 1800
Austin, Texas 78701

WILLIAM J. KEARNS, JR.
Township Solicitor
630 Beverly Rancocus Road
Willingboro, New Jersey 08046

PATRICIA A. LYNCH
City Attorney
City Hall
P.O. Box 1900
Reno, Nevada 89505

ROBERT J. MANGLER
Village Attorney of Orland Park
c/o Klein, Thorpe & Jenkins
180 North LaSalle Street
Suite 1600
Chicago, Illinois 60601

JOHN J. ZIMMERMANN
Attorney for Municipalities
524 South Vine Avenue
Park Ridge, Illinois 60068

BENJAMIN L. BROWN *
General Counsel and
Executive Director
1000 Connecticut Ave., N.W.
Suite 902
Washington, D.C. 2003(
(202) 466-5424

DAVID CAYLOR
City Attorney
#2 Civil Center Plaza
El Paso, Texas 79901

JOSEPH N. DE RAISMES
City Attorney
1777 Broadway
Boulder, Colorado 8030(

JAMES H. EPPS, III
City Attorney
115 East Unaka Avenue
Johnson City, Tennessee 37601

FRANK B. GUMMEY, III
City Attorney
P.O. Box 2451
Daytona Beach, Florida 32115

* Counsel of Record
for the Amicus Curiae

Date: July 11, 1994

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BRIEF OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS CURIAE

The interest of the amicus is set forth in the motion accompanying this brief.

STATEMENT OF THE CASE

Amicus curiae adopts the statements of the case presented by the Petitioner, City of Clearwater.

SUMMARY OF ARGUMENT

This case is compelling because many hundreds, if not thousands, of local governments throughout the country have confronted the mounting problem of fraudulent so-

licitation of funds by charitable organizations by enacting laws requiring registration and disclosure of charitable organizations. There are at least twenty state disclosure statutes and hundreds if not thousands more municipal and county disclosure ordinances. This Court has for a number of years held that these laws are a constitutionally permissible means of addressing the problem of fraudulent solicitation by charitable organizations. *See, Village of Schaumberg v. Citizens For A Better Environment, et al.*, 444 U.S. 620 (1980).

Thus, the impact of this case reaches far beyond the City of Clearwater. If this Court upholds the Eleventh Circuit's decision, scores of laws similar to Clearwater's will be jeopardized. This is so because the disclosure provisions of Clearwater's law, which the Eleventh Circuit held unconstitutional, are virtually identical to those contained in the numerous state, county, and city disclosure laws.

In upholding disclosure laws as a permissible means of regulating charitable solicitations, this Court has recognized that the disclosure of finances assists in preventing fraud by informing the public of the ways in which its contributions are used. This Court has reiterated on a number of occasions that such laws may be used as companions to anti-fraud criminal statutes. Yet, the Eleventh Circuit held that local governments may be limited to enforcing a criminal anti-fraud statute.

Despite the fact that Clearwater's disclosure requirements mirror those of statutes cited with approval by this Court, *e.g., Riley v. National Federation of the Blind*, 487 U.S. 781 (1988), *Village of Schaumberg*, and the Fifth Circuit, *International Society for Krishna Consciousness v. City of Houston*, 689 F.2d 541 (5th Cir. 1982), the Eleventh Circuit found most of the disclosure provisions of the Clearwater law unconstitutional. In so ruling, the Eleventh Circuit has destroyed registration and disclosure laws of hundreds or thousands of state and

local governments which have been adopted to combat fraud.

The potential disastrous results of the Eleventh Circuit's rulings are exacerbated because the problem of fraudulent solicitation by secular and religious groups has been growing in the past twenty to thirty years. Judge Wisdom recognized in the *Houston* opinion the increase in public awareness of abuses and charitable fundraising. Likewise, charitable organizations themselves have noted that fraudulent activities by unscrupulous charity groups has grown in the past twenty to thirty years. This problem has been further exacerbated because the number of charities has increased tremendously in the past decade. The increase in charities, along with advances in technology, have multiplied the opportunities for charitable solicitation and fraud. As the problem of fraudulent solicitation grows in this country, the need for the enforcement of disclosure laws, which has long been recognized by this Court, continues and increases.

The Eleventh Circuit's decision will also thwart governments from addressing problems outside of the area of fraudulent charitable solicitations. In addressing the issue of whether Clearwater's law was adopted with an impermissible motive, the Eleventh Circuit, unable to point to any evidence of anti-religious animosity against Scientology, relied on newspaper clippings and excerpts from television programs showing deep concern over criminal and other anti-social conduct by Scientology and ruled that this constitutes opposition to Scientology as a religion. By equating Clearwater's concern with the alleged criminal and anti-social conduct of Scientology with anti-religious motive, the Eleventh Circuit has crippled local government from enacting laws addressing problems brought to the forefront by groups claiming to be religious.

Frequently, laws are adopted because the actions of one group bring an issue to the attention of government. If that group happens to be religious, or claims to be re-

ligious, the law will be found to have an impermissible motive and will have to be struck down, according to the Eleventh Circuit's ruling. If the Circuit's position on the issue of impermissible motive is not reviewed and reversed, legislative bodies throughout the country will be precluded from protecting their citizens from improper conduct solely because the legislators learned of the problem through the actions of a religious group.

The Eleventh Circuit's ruling is contrary to this Court's holdings on the issue of impermissible motive. Recently, when this Court found a law to be improperly motivated, it cited evidence of a purpose to regulate conduct motivated by religious beliefs and to confine regulation to adherents of that religion while permitting others to engage in the same conduct. *See, Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* —— U.S. ——, 113 S.Ct. 2217 (1993). The record in this case does not contain any evidence similar to that cited by this Court in *Church of the Lukumi Babalu Aye, Inc.* Indeed, the Eleventh Circuit could not point to any evidence that Clearwater's legislators were motivated by animosity towards the religious beliefs of the Scientologists and it ignored the fact that Clearwater's law is neutrally applicable to all eleemosynary secular and religious groups.

For the reasons stated, this Court should review the Eleventh Circuit's decision. Otherwise local governments will be thwarted from addressing the ever increasing problem of fraudulent charitable solicitation and from addressing other problems brought to the forefront by the actions of religious groups.

ARGUMENT

I. THE ELEVENTH CIRCUIT'S RULING EFFECTIVELY WOULD RENDER UNCONSTITUTIONAL HUNDREDS, IF NOT THOUSANDS, OF COUNTY AND MUNICIPAL ORDINANCES AND STATE STATUTES REGULATING THE SOLICITATION OF FUNDS BY CHARITABLE ORGANIZATIONS.

A. Numerous municipalities, counties, and states throughout the country have had to confront problems of fraudulent solicitation of funds by charitable organizations; these governments have done so by adopting registration and disclosure laws. These laws typically require charitable organizations to register in advance with the applicable governmental entity before commencing solicitation, and, at the close of the year, to disclose financial information regarding the collection and use of the funds solicited. Clearwater has cited 20 state registration and disclosure laws in its Petition for Writ of Certiorari, and, in the district court, submitted both municipal disclosure ordinances from Dallas, Texas, Los Angeles, California, Jacksonville, Florida, Alexandria, Virginia, and a list of 236 counties and cities in California alone that have laws requiring permits to solicit charitable contributions. Amicus also notes that approximately 35 cities in Los Angeles County, California alone and eleven suburbs of Cook County, Illinois (the Chicago metropolitan area) have adopted ordinances regulating charitable fundraising.

Such statutes and ordinances have been approved by the courts. See e.g., *Famine Relief Fund v. State of West Virginia,* 905 F.2d 747 (4th Cir. 1990); *Gospel Army v. Los Angeles,* 163 P.2d 704, 708 n.1 (1945), *appeal dismissed,* 331 U.S. 543 (1947). This Court itself has advised local governments on a number of occasions that registration and disclosure laws are a constitutionally permissible means of addressing the problem of fraudulent solicitation by charitable groups. *See, Riley v. National Federation of the Blind; Secretary of the State of Mary-*

land v. Munson, 467 U.S. 947 (1984); *Larson v. Valente*, 456 U.S. 228 (1982); *Village of Schaumberg*. The Court stated in *Village of Schaumberg* that

> Efforts to promote disclosure of finances of charitable organizations also may assist in preventing fraud by informing the public of the ways in which their contributions will be employed. Such measures may help make contribution decisions to be more informed, while leaving to individual choice the decision whether to contribute to organizations that spend large amounts on salaries and administrative expenses.

444 U.S. at 637-38. In *Riley*, this Court reiterated that government "may constitutionally require fund raisers to disclose certain financial information to" government. 487 U.S. at 795.

This Court also has ruled that such laws can be enforced in *addition* to penal anti-fraud statutes. *Id.*[1]

Following the guidance of this Court, numerous local and state governments have adopted registration and disclosure laws to combat fraudulent charitable solicitation.[2] Yet, the Eleventh Circuit struck down Clearwater's law because a city's substantial interest in preventing fraud

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[1] Charitable organizations have expressed support for disclosure laws. For example, the National Health Council, a charitable organization that has approximately 65 charitable groups as its members (most of which are well-known organizations), has stated that disclosure and reporting requirements are the best means of regulating charitable solicitations. The National Health Council, *Viewpoints: State Legislation Regulating Solicitation of Funds from the Public*, (1976 Revised Edition).

[2] For example, the State of California adopted a new disclosure law after this Court issued the decision in *Riley v. National Federation of the Blind*, 487 U.S. 781 (1988). It did so because donors want to know how their charitable donations are spent. While citizens tend to believe that their gifts will be used to carry out charitable programs, a large portion may be consumed in fundraising expenses and every year some portion is siphoned away

allegedly is not furthered by the disclosures required by Clearwater's ordinance (and by hundreds or thousands of other disclosure laws). *Church of Scientology Flag Service Org., Inc. v. City of Clearwater,* 2 F.3d 1514, 1545 (11th Cir. 1993).

The Circuit ruled that disclosures such as those required by Clearwater cannot lawfully be required under the free speech clause. This ruling destroys registration and disclosure laws whether they apply to secular groups alone or to religious groups as well. The Circuit also ruled that, under the Establishment Clause, a disclosure law is unlawful as applied to religious (or purportedly religious) groups even if it is neutrally and generally applicable to secular groups as well and is also supported by a compelling state interest. The Circuit further ruled that, at least as applied to religious (or purportedly religious) groups, a disclosure law cannot lawfully require disclosure of fraudulently omitted information, as opposed to barring affirmatively untruthful statements. Thus, under the Circuit's decision, a disclosure law could not require revelation of the commonly true but commonly undisclosed fact that more than half of the donations made to a group end up in the pockets of professional fundraisers rather than being used for the purposes for which donors believe they are contributing.

Finally, under the Circuit's decision, if the need for a registration and disclosure law was brought to light by the actions of a religious (or purportedly religious) group, the law will *ipso facto* be illegal in its entirety, regardless of whether it is applied to religious groups or secular

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from charities by solicitors who mislead and defraud the public. California's Attorney General also has noted that it is extremely difficult for the average donor to uncover fraudulent or misleading solicitations. On the other hand, misinformed donors are less vulnerable to unsupported charity claims. *Attorney General's Report on Charitable Solicitation by Commercial Fundraisers,* Daniel E. Lungren, Attorney General of the State of California, December, 1993.

ones, as allegedly being the product of anti-religious animus.

B. The Eleventh Circuit's rulings destroy the registration and disclosure laws of hundreds or thousands of state and local governments which have adopted these laws to combat fraud by charitable groups—usually secular groups, but sometimes either religious groups or religious groups conducting secular activities such as businesses in order to obtain monies to be used for religious purposes. This destruction of laws arises because the registration and disclosure provisions assailed by the Circuit mirror the provisions of innumerable laws elsewhere, including laws previously commented on approvingly by this Court.

For example, under the North Carolina law which this Court cited with approval in *Riley*, 487 U.S. at 795, 799, a registrant must provide a detailed financial statement including a balance sheet, amounts of funds raised, costs and expenses, disbursement of funds raised, changes in fund balances, and an accountant's opinion as to the fairness of the presentation of financial information; the methods of solicitation, including a narrative description of the promotional plan together with advertising material prepared for public distribution; the time period and geographic area in which the solicitations will be made; the proposed use of the contributions and the total amount of funds proposed to be raised; the name and address of any branches which will share in the charitable contributions; the locale of financial records; the names, addresses and occupations of officers, directors, trustees, persons directly in charge of the fundraising actvities, and custodians of financial records and contributions; whether any such person has been convicted of a felony; any determination of tax-exempt status under the Internal Revenue Code; whether the registrant is authorized by another governmental entity to solicit contributions and whether any officer or professional solicitor has ever been enjoined from soliciting contributions. N.C. Gen. Stat. § 131C-7.

The disclosure provisions of the law approved in *International Society for Krishna Consciousness v. City of Houston*, 689 F.2d 541 (5th Cir. 1982), are likewise virtually identical to those in Clearwater's law, since the latter was in large part copied verbatim or nearly verbatim from the former. The disclosure provisions of the Los Angeles ordinance approved in *Gospel Army*, which applied to commercial activities of religious organizations, are likewise very similar to Clearwater's, and the provisions of Alexandria, Virginia's laws are similar in numerous aspects.

The *Gospel Army* ordinance required disclosure of, among other things, information regarding the purpose, character, method, and estimated expenses of the solicitation (showing salaries and other items of expense); the need for the contribution to be solicited; the proposed use of the solicited funds; the amount that will remain available for charitable purposes after payment of expenses; the amount received from solicitations in the preceding calendar year; the expenses from such solicitations (including individual salaries or other items of compensation); and the amount that remained available for charitable purposes. *Gospel Army*, 163 P.2d at 708.

The Alexandria ordinance requires that a charitable organization provide the name of the organization and its purpose; a statement reflecting the percentage of the organization's solicited funds used to pay fundraising expenses for the preceding year; its principal address and any address within the city; the names of any branches or affiliates; the place and date of its establishment, the form of its organization; any determination of tax-exempt status under the Internal Revenue Code, the names and addresses of its officers, directors, trustees, principal salaried executive staff officer and any person having custody of the organization's financial records; a statement as to whether the organization intends to have others perform the solicitation; a statement indicating where else in Vir-

ginia the organization has been permitted to solicit; whether it, any officer or professional solicitor has ever been enjoined from soliciting contributions; the purpose for which the solicited funds will be used; the names of those who have responsibility for the custody of the funds; and a statement indicating whether the organization, any officer, or any professional solicitor has been convicted of certain crimes. Section 9-10-2, Alexandria City Code.

Other municipal ordinances also require disclosure of the methods of solicitation, all expenses, including salaries, incurred in the solicitation, and a detailed report of the wages, fees, commissions, and expenses paid in connection with the solicitation.

Because the disclosure requirements of Clearwater's ordinance echo the financial disclosure demanded in the North Carolina and Illinois statutes cited with approval by this Court, and demanded as well in hundreds or thoustands of other laws such as those discussed above, the Eleventh Circuit's decision jeopardizes a huge number of city, county, and state registration and disclosure laws and is contrary to this Court's prior decisions. Therefore, the Eleventh Circuit's rulings raise significant constitutional issues important to cities, counties and states throughout the country which strive to protect their citizens from fraudulent solicitation by constitutionally permissible means.

C. The unfortunate results caused by the Circuit's rulings are multiplied because fraudulent solicitation by secular and religious charitable groups has been growing during the last two to three decades. Thus, Judge Wisdom began his opinion in *City of Houston* by expressly alluding to the increase in public awareness of abuses in charitable fundraising. 689 F.2d at 543. The National Health Council, as long ago as 1976, wrote that "In the past several decades the multiplicity and complexity of tax-exempt activities for charitable purposes in the United States, the willingness of the general public to financially support them, *and the failure of many of these organiza-*

tions to provide adequate financial information created an atmosphere favorable to fraudulent activities by unscrupulous groups." Viewpoints: State Legislation Regulating Solicitation of Funds from the Public at xi (emphasis added). The Council noted further that "notwithstanding the existence of state or federal laws, if local governing bodies determine that citizens of their areas are not protected from unreasonable impositions and fraudulent activities they have the obligation to invoke the police power of government through enactment of proper ordinances." *Id.*

The problem has been further exacerbated because the number of charities has increased tremendously in the past decade. The IRS master file of 501(c)(3) organizations rose from 322,826 to 546,100, a 69% increase from 1982 to 1992. *Hard Cases/Bad Law? Regulating the Sector,* 1993 National Leadership Forum, Remarks by Christine T. Milliken, Executive Director and General Counsel, National Association of Attorney Generals, November 15, 1993. Additionally, charitable groups have discovered that new technologies are allowing them revolutionary new ways to solicit charitable contributions. *Id.*[3]

The increase in charities and the advance of technology have multiplied the opportunities for affirmative fraud or omission. For instance, in California in 1992, 216 commercial fundraisers collected $89,000,000.00 for charities, but less than one-third went to the charities, with the rest being used to pay the fundraisers and cover expenses. One hundred thirty-eight charities in California received 15 percent or less of the money collected by commercial fundraisers on their behalf. *Attorney General's Report on Charitable Solicitation by Commercial Fundraisers.* Virtually every national or world-wide tragic

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[3] Charities continue to thrive in this country. As an example, in California alone in 1992, 63,000 registered, tax-exempt charities collected over $32 billion. *Attorney General's Report on Charitable Solicitation, supra* at 3.

event is now followed by charitable solicitation efforts that result in little or no funds being used for their intended purpose. It has been reported that Desert Storm resulted in the creation of new charities to provide support to U.S. troops, but little or none of the money reached the troops and many states had to issue warnings to the public.

Thus, it is not surprising that, in an informal survey performed by the Executive Director of NAAG in late 1993, 24 states reported that the number of complaints about charitable organizations had increased in the last 2 years. Ten of these states reported *substantial* increases in complaints, and no states reported a decrease in complaints. *Hard Cases/Bad Law?*

The problem of unscrupulous solicitations in this country continues and grows, and the need for the enforcement of registration and disclosure laws therefore continues and grows. Because of the increase in the size of the nonprofit sector and the complexity of its transactions, regulation by disclosure laws is now required more than ever. Yet, the Eleventh Circuit has placed the validity of *all* these laws in peril. Amicus urges this Court to grant Clearwater's petition for certiorari and to continue to allow state and local governments the means, through registration and disclosure laws, to protect their citizens from unscrupulous solicitors.

II. THE ELEVENTH CIRCUIT RULED THAT CLEARWATER ENACTED ITS LAW WITH AN IMPERMISSIBLE MOTIVE BECAUSE THE NEED FOR THE LAW WAS MADE CLEAR BY THE CONDUCT OF A GROUP CLAIMING TO BE A RELIGION. THIS RULING DISABLES GOVERNMENTS FROM ENACTING LAWS TO PROTECT CITIZENS WHEN PROBLEMS COME TO THE GOVERNMENTS' ATTENTION BECAUSE OF MISCONDUCT BY GROUPS CLAIMING TO BE RELIGIOUS.

The Eleventh Circuit has disabled state and local governments from combatting fraud (or other crimes) when the need for such regulation has been made evident by the conduct of a group which is or purports to be religious. This crippling of governmental authority to combat crime has occurred because the Circuit has equated (i) opposition to *fraudulent or other criminal conduct* by a religious group with (ii) *anti-religious* opposition to the group. The Court has compounded this error by ruling that the disclosure law must be entirely thrown out, so that it is enforceable against neither secular nor religious groups, if catalyzed by opposition to the criminal or anti-social conduct of a religious (or purportedly religious) group.

We note that, under the Eleventh Circuit's ruling, the Court's seminal holdings in *Davis v. Beason,* 133 U.S. 333 (1890) and *Reynolds v. United States,* 98 U.S. 145 (1878), could never have been issued. Those cases held that government could enact laws against anti-social misconduct (polygamy) brought to light because practiced by a religious body, the Church of the Latter-Day Saints (Mormons). If the fact that polygamy came to light when practiced by a religion were to render a law constitutionally impermissible, as under the Eleventh Circuit's ruling, then the laws against polygamy could have been enforced against neither the Mormons nor any secular group.

In discussing the motivation underlying Clearwater's ordinance, the Eleventh Circuit was unable to point to *any*

evidence of *anti-religious* animus against Scientology. Indeed, all the record evidence was to the contrary; it not only showed a complete absence of *anti-religious* sentiment, but no knowledge of or concern over any religious tenets of Scientology. The Circuit therefore relied on newspaper clippings and excerpts from television showing deep concern over *criminal* and *other anti-social conduct* by Scientology (e.g., concern over fraud and physical abuse), and ruled that *this* constitutes opposition to Scientology *as a religion*. Such an equation is incorrect on its face. This rationale will cripple any law, however neutrally and generally applicable to secular and religious transgressions alike, which arose because of the actions of a group claiming to be religious. It would, as said, have destroyed the laws against polygamy.

Frequently laws are adopted because the actions of one group bring an issue to the attention of government. If that group happens to be religious, the law will have an impermissible motive and will have to be struck down, according to the Eleventh Circuit. If the Circuit's position is not reviewed and reversed, legislative bodies will be precluded from protecting their citizens from improper conduct that by happenstance is brought to the legislators' attention by the actions of a religious group. This could vitiate laws that have or may arise to deal with drug problems, with criminal acts against doctors and hospitals offering birth control advice and devices or offering abortions, and with various forms of abuse of children, if these problems come to attention because of actions of members of religious organizations.

When this Court recently found a law to be improperly motivated, it cited evidence of a purpose to regulate conduct only when motivated by religious belief, and to confine regulation to adherents of that religion while permitting others to engage in identical conduct. See e.g., *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, —— U.S. ——, 113 S.Ct. 2217 (1993). In *Lukumi Babalu Aye*, this Court cited legislative history showing that,

because of animosity toward the religious beliefs of Santeria, the animal sacrifice laws adopted by Hialeah were intended to target animal sacrifice by a religion because of its religious motivation, but allowed numerous other persons and groups to engage in similar or identical conduct when *not* motivated by religious belief. 113 S.Ct. at 2231. Thus, this Court concluded that the law's objectives were to suppress religion. *Id.* Here, the Eleventh Circuit did not point to *any* evidence that Clearwater's legislators were motivated by animosity towards the religious beliefs of the Scientologists and ignored the fact that Clearwater's law applied equally to a host of secular and religious groups. The Circuit could only muster evidence showing that Clearwater's intent was to stop criminal and anti-social conduct by any group.

In *Lukumi Babalu Aye,* this Court recognized the distinction between laws permissibly motivated to prevent anti-social conduct by any group and laws impermissibly motivated by opposition to religious beliefs of a particular sect. The Court thus noted that adverse impact on a religion does *not* prove impermissible anti-religious motive. "For example, a social harm may have been a legitimate concern of government for reasons quite apart from discrimination. *McGowan v. Maryland,* 366 U.S. at 442, 81 S.Ct. at 1113-14. See e.g., *Reynolds v. United States,* 98 U.S. 145 (1878), *Davis v. Beason,* 133 U.S. 333 (1890) . . . ." *Lukumi Babalu Aye,* 113 S.Ct. at 2227. Thus, this Court has recognized that a legislative body does not harbor an anti-religious animus merely because it elects to adopt a neutral, generally applicable law that has an impact on a religious group and addresses criminal, anti-social or immoral conduct in which the group allegedly engages.

But the Eleventh Circuit was oblivious to the foregoing distinction. Instead, it equated opposition to crime with opposition to religion. It thus has limited the ability of government to confront conduct causing social harm if that conduct is undertaken by a religious group. It is

nonsensical, however, to say that if Clearwater became aware of the need for a disclosure law because of fraudulent solicitation practices of a secular group such as, for example, the American Heart Association, the law would have been adopted with a permissible motive, but to say that exactly the same neutrally and generally applicable law was unlawfully adopted with impermissible motive because the soliciting group whose conduct made a disclosure law necessary claimed to be a religion. Under the Circuit's ruling a government could not permissibly regulate child abuse, violence at aboriton clinics, drug use, or other practices if they came to light because of the action of religious groups, although it could regulate such conduct if it came to light because of the actions of secular groups. Such is not the teaching of this Court, and the Circuit's ruling will prevent government from addressing legitimate concerns raised by anti-social conduct of any group which is or claims to be a religion. Therefore, amicus urges this Court to grant Clearwater's Petition for Writ of Certiorari and to reverse the decision of the Eleventh Circuit.

CONCLUSION

Based on the foregoing, amicus request that this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

IRIS J. JONES
City Attorney of Prairie View
c/o Wright & Greenhill
221 West 6th Street
Suite 1800
Austin, Texas 78701

WILLIAM J. KEARNS, JR.
Township Solicitor
630 Beverly Rancocus Road
Willingboro, New Jersey 08046

PATRICIA A. LYNCH
City Attorney
City Hall
P.O. Box 1900
Reno, Nevada 89505

ROBERT J. MANGLER
Village Attorney of Orland Park
c/o Klein, Thorpe & Jenkins
180 North LaSalle Street
Suite 1600
Chicago, Illinois 60601

JOHN J. ZIMMERMANN
Attorney for Municipalities
524 South Vine Avenue
Park Ridge, Illinois 60068

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BENJAMIN L. BROWN *
General Counsel and
Executive Director
1000 Connecticut Ave., N.W.
Suite 902
Washington, D.C. 20036
(202) 466-5424

DAVID CAYLOR
City Attorney
#2 Civil Center Plaza
El Paso, Texas 79901

JOSEPH N. DE RAISMES
City Attorney
1777 Broadway
Boulder, Colorado 80306

JAMES H. EPPS, III
City Attorney
115 East Unaka Avenue
Johnson City, Tennessee 37601

FRANK B. GUMMEY, III
City Attorney
P.O. Box 2451
Daytona Beach, Florida 32115

* Counsel of Record
for the Amicus Curiae